

February 9, 2009

Massachusetts Department of Energy Resources
100 Cambridge Street
Boston, MA 02110

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Re: Comments on Proposed Final Regulations (the “Proposed Regulations”) for Massachusetts RPS Class I (225 CMR 14.00), RPS Class II (225 CMR 15.00), and APS (225 CMR 16.00)

Dear Sir/Madam:

TransCanada Power Marketing Ltd. (“TCPM”) is pleased to submit the following comments to the Department of Energy Resources (“Department”) with respect to the Proposed Regulations which implement the new statutory requirements for the renewable and alternative energy portfolio standards under Sections 11F and 11F ½ of Chapter 25A of the Massachusetts General Laws (the “RPS” or “RPS Provisions”).

Comments:

1. *For clarification purposes, the Proposed Regulations should expressly state that any retail contracts executed or extended before January 1, 2009 are exempted from the RPS Class II and APS requirements imposed on retail suppliers by Sections 11F(d) and 11F½(a), respectively, of the RPS Provisions*

The requirements under Sections 11F(d) and 11F½(a) each begin with the sentence “[e]very retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, [underlines my own] shall provide a minimum percentage of kilowatt-hour sales...” from Class II renewable or alternative energy generating sources, respectively. Based on the plain language of these provisions, it is clear that only contracts executed or extended on or after January 1, 2009, were intended to be subject to the RPS Class II and APS requirements of Sections 11F(d) and 11F½(a). *Ipsa facto*, any contracts executed or extended before such date should not be factored into these retail supplier requirements.

One possible method of tracking compliance with Sections 11F(d) and 11F½(a) by every retail electric supplier, is to mandate self-certification by each retail electric supplier. If the Department faces any compliance inquiries, then it can request further information from the supplier including, transactional data from ISO-NE and the applicable contracts, provided all confidentiality restrictions are reasonably addressed.

2. *The Proposed Regulations should expressly accept any Renewable Energy Production Tax Credit (PTC)¹ certification by FERC as a valid basis for calculating the incremental energy attributable to any capacity addition or efficiency improvement for Class I qualification*

Under FERC's PTC certification process, the applicant is required to submit an analysis and calculation of both a historic average annual hydropower production baseline as well as an average annual incremental energy gain as a result of the modification. The FERC requires two factors be consistent between these two calculations. As a primary factor, they require both calculations use the same water or water years in order to avoid an over or under statement of comparable resulting energy due to low or high water years. Secondly, they strongly discourage use of historical data to create a baseline as well as actual results to represent the gain. FERC prefers the historic and future energy be modeled based upon the unit performance data. Assuming it meets these requirements, FERC reviews the information and then certifies the calculation as a average annual energy gain due to the improvement.

As previously commented by TCPM in related stakeholder forums, TCPM reiterates that if FERC has certified the increased energy gain at a hydropower facility, then such certified amount should be an acceptable basis of calculating the incremental energy for Class I qualification.² Using the FERC PTC certification would avoid having the Department create a new and potentially conflicting incremental energy calculation method, and ensure that the RPS Provisions are implemented and administered in a timely manner.

This approach is consistent with the methods used in other states in New England (ie. the Rhode Island renewable energy standards³) and is consistent with the general guidelines in the rules which allow for an "analysis" as stated under bullet #2 of Appendix A of the Department's Statement of Qualifications Form. TCPM asks that this approach specifically be identified in Appendix A under bullet #2 as an approved method. This method, in our view, is a preferred measurement and avoids potential errors due to variations in hydrologic conditions or underperforming.

3. *The Proposed Regulations should clarify that the environmental standards compliance for any capacity addition or efficiency upgrade ("Incremental Project") will be determined based on the environmental impacts of the specific project and not on the basis of the whole facility*

Currently, the Proposed Regulations address the environmental standards compliance for hydropower at the "facility"⁴ level only. The RPS Provisions, however, allow for "incremental new energy" from increased capacity or efficiency improvements at existing hydroelectric facilities to qualify as RPS Class I generation.

Accordingly, TCPM respectfully submits that the Proposed Regulations should expressly state that environmental standards for any Incremental Project will be individually assessed. In other words, any environmental concerns identified with the whole facility should not automatically

¹ See attached Renewable Energy Production Tax Credit: Instructions for Requesting Certification of Incremental Hydropower Production Pursuant to the Energy Policy Act of 2005, as updated and posted on FERC's website as of March 2007 (hereinafter, referred to as the "FERC Instructions")

² FERC certifies a set amount of MWH's for 10 years. If, however, the DOER wishes to apply a percentage to the actual future total facility output, then they could use the percentage gain based upon the FERC PTC certification.

³ Sections 3.14, 3.23 (v) and Section 3.23 (vi) of the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (July 25, 2007) promulgated pursuant to Renewable Energy Standards, Section 39-26-1 et. Seq. of the General Laws of Rhode Island

⁴ The term "Generation Unit" is defined as a "facility" that converts a fuel or energy resource into electrical energy

disqualify the Incremental Project from RPS Class I unless such project also raises the same concern at the project specific level.

Based on our experience, any Incremental Project will involve significant consultations with the various interests of federal and state agencies, local watershed users and other local interests during the applicable FERC and state water quality certification processes. Therefore, TCPM further submits that if an Incremental Project has received a Section 401 water qualification certification as a component of its approved FERC license, re-license or amendment application, then the incremental new energy from such Incremental Project should qualify as RPS Class I generation.

We appreciate this opportunity to comment on the Proposed Regulations.

Sincerely,

TRANSCANADA POWER MARKETING LTD.

A handwritten signature in black ink, appearing to read 'Thomas Hwang', is positioned above the printed name.

Thomas Hwang
Senior Legal Counsel

cc: Michael E. Hachey, Vice President
Tonya Murphy, Legal Dept.